

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MCKINNEY SQUARE PROPERTIES NO. 1	§	
LTD.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	CIVIL ACTION NO. 3:16-cv-00956
	§	
SENECA INSURANCE COMPANY, INC.;	§	
LEVELFIRST, LLC; WALDMAN BROS.	§	
L.L.P.,	§	
	§	
<i>Defendants.</i>	§	

**DEFENDANT SENECA INSURANCE
COMPANY, INC.'S MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Seneca Insurance Company, Inc. (“Seneca”) files this Motion to Dismiss the claims of Plaintiff McKinney Square Properties No.1, Ltd. (“McKinney Square” or “Plaintiff”) because Plaintiff fails to state an actionable claim against Seneca pursuant to Federal Rule of Civil Procedure 12(b)(6). Texas law is clear that an insured cannot pursue a claim for negligent claims handling against its insurer. As negligence is the only cause of action Plaintiff asserts against Seneca, Plaintiff has failed to state a claim on which relief can be granted. For the reasons set forth in Seneca’s Brief in Support of its Motion to Dismiss, Seneca respectfully asks this Court to dismiss Plaintiff’s claim against Seneca and for any and all such further relief to which Seneca may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ James N. Isbell

James N. Isbell
Attorney-in-Charge
Bar No. 10431900
jisbell@thompsoncoe.com
Christopher H. Avery
Bar No. 24069321
cavery@thompsoncoe.com
Vasilia M. Wilkes
Bar No. 24051452
vwilkes@thompsoncoe.com
One Riverway, Suite 1400
Houston, Texas 77056
Telephone: (713) 403-8210
Facsimile: (713) 403-8299

Local Counsel:

Lindsey Shine Lawrence
State Bar No. 24053681
THOMPSON, COE, COUSINS & IRONS, L.L.P.
700 N. Pearl Street, 25th Floor
Dallas, Texas 75201
Telephone: (214) 871-8200
Facsimile: (214) 871-8209
Email: llawrence@thompsoncoe.com

ATTORNEYS FOR DEFENDANT SENECA INSURANCE COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2016, a true and correct copy of the foregoing instrument was served pursuant to the Federal Rules of Civil Procedure on the following counsel and parties of record:

Evan Lane (Van) Shaw
Janet R. Randle
Collen Meyer
David Welch
LAW OFFICES OF VAN SHAW
2723 Fairmont
Dallas, Texas 75201

Telephone: (214) 754-7110

Facsimile: (214) 754-7115

van@shawlaw.net

janet@shawlaw.net

colleen@shawlaw.net

david@shawlaw.net

COUNSEL FOR PLAINTIFF MCKINNEY SQUARE PROPERTIES NO. 1 LTD.

Richard E. Schellhammer

Cara D. Kennemer

UNDERWOOD LAW

1008 Macon Street, Suite 101

Fort Worth, Texas 76102

Telephone: (817) 885-7529

Fax: (817) 977-5902

COUNSEL FOR DEFENDANT LEVELFIRST, LLC

Waldman Bros., LLP.

6200 LBJ Freeway, Suite 200

Dallas, Texas 75240

Telephone: (972) 458-8700

Fax: (972) 458-8755

Via Certified Mail, Return Receipt Requested

/s/ James N. Isbell

James N. Isbell